

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Fernando Gamboa Howard,

Petitioner

V.

Rex Tillerson, et al.,

Respondents

2:17-cv-01977-JAD-GWF

Order Directing Response

Counseled petitioner Fernando Gamboa Howard brings this petition for a writ of habeas corpus under 28 U.S.C. § 2241 and challenges his extradition to Mexico by the United States of America. The filing fee has been paid, and it appears that Howard has named an appropriate defendant or respondents for this type of proceeding.¹ It also appears that he has served the petition on the appropriate officers under Fed. R. Civ. P. 4(i)(2),² and counsel for the respondents have entered an appearance.

Accordingly, IT IS HEREBY ORDERED under 28 U.S.C. § 2243 that respondents have until December 18, 2017, to answer or otherwise respond to the petition and show cause why relief should not be granted.

¹ See *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); see also *Armentero v. INS*, 340 F.3d 1058, 1071 (9th Cir. 2003), opinion withdrawn on grant of *en banc* rehearing, 382 F.3d 1153 (9th Cir. 2004), appeal dismissed per fugitive disentitlement doctrine, 412 F.3d 1088 (9th Cir. 2005). The administrator of the Nevada Southern Detention Center, Janice Killian, conceivably also could have been named as petitioner’s most immediate custodian. But the July 3, 2017, order (ECF No. 94) in case no. 2:15-mj-627-NJK committed petitioner “to the custody of the United States Marshal,” who is named as a respondent in this case. Particularly given the prior order, I find that naming the Marshal as the immediate custodian sufficiently complies with the immediate custodian rule. Any custody by Ms. Killian is derivative of the Marshal’s otherwise immediate custody, and any court order to produce the petitioner from his custody within this district would be directed to the Marshal following upon the prior July 3, 2017, order.

² See ECF No. 1 at 21.

1 IT IS FURTHER ORDERED that Gamboa Howard may file a reply no later than 14 days
2 after respondents serve their response.

3 DATED: December 13, 2017.

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5 U.S. District Judge Jennifer A. Dorsey